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**William M. Chanfrau, Jr.**  
Former Assistant State Attorney  
Personal Injury  
Wrongful Death  
Criminal Law

**W.M. Chanfrau, Sr.**  
Board Certified Civil Trial Attorney  
Personal Injury  
Wrongful Death

**Kelly H. Chanfrau**  
Board Certified Labor & Employment Attorney  
Wage and Hour Disputes  
Sexual Harassment  
Personal Injury

January 23, 2019

**VIA U.S. MAIL, CERTIFIED MAIL**  
**#9171999991703966793404 &**  
**E-MAIL: DECKERT@VOLUSIA.ORG**

Daniel Eckert, Esq.  
COUNTY ATTORNEY  
County of Volusia  
123 W. Indiana Ave., Rm. 301  
DeLand, FL 32720

***Re: Heather Post***

Dear Mr. Eckert:

We have been retained to represent Heather Post. Please direct any and all correspondence on this matter to our attention. This letter is to be directed to the Legal Department/General Counsel for Volusia County. If this letter has reached you in error, we apologize and kindly request that you contact our office immediately so we may forward it to the appropriate department.

**A. My Client's Previous Employment with the County and The Comments Made About Her In Public By Agents, the Former County Manager, and Others.**

As you may be aware, Ms. Post was employed with Volusia County from July 2008 through the end of September of 2010 as a Deputy Sheriff II. She began her law enforcement career in February of 1992. Throughout her career and prior to working with Volusia County, Ms. Post worked in a variety of capacities in uniformed patrol, undercover & narcotics operations, and as an investigator of many types of crimes (including Homicide Case Agent). She held supervisory positions filling in as Criminal Investigative Unit Sergeant, created/led an Honor Guard Unit, headed up task forces involving statewide and nationwide crime rings, served on the board of several state and countywide law enforcement units, held many additional certifications (CVSA operator,

Intoxilyzer operator, SWAT School and more), and was highly recognized for planning, developing, and implementing various law enforcement operations.

While working with the Volusia County Sheriff's Office, Ms. Post was an exemplary employee, as evidenced by evaluations that cited she exceeded standards every time, by her nomination for Deputy of the Quarter, by her instructing other law enforcement officers in Advanced & Specialized law enforcement courses such as the Detectives Academy & Field Training Officer, by receiving numerous accolades for professionalism and going "above and beyond" in her duties from the U.S. Marshals Service, Probation and Parole, from citizens and from others within her own agency, and she was well-trained in her equipment even routinely being designated an expert pistol marksman in annual qualifications.

**B. My Client Complained of Harassment and Discrimination and Was Fired Shortly Thereafter and Paid \$44,000.00 to Drop Her Claims.**

Our investigation of my client's tenure as an employee with Volusia County reveals that she was retaliated against for filing a harassment and discrimination complaint with the County and an EEOC Charge with the federal government after the County pursued two separate and ridiculous internal investigations against her for (1) not personally calling a Captain after a training day when her Sergeant made the call (the County's claim of Failure to Follow an Order) and (2) for allegedly saying she did not know anything about HIPAA when she had participated in HIPAA training by watching a short 15-slide power point presentation seven years earlier (the County's claim of Perjury). In our practice, it is certainly rare that a stellar and decorated officer would be investigated and later fired for these items.

After my client filed a discrimination complaint, a third internal investigation was launched against my client. My client then filed an EEOC Charge, and was fired within a month. As you may know, both state and federal law across the country routinely hold that when an employee is fired within a month of complaining of discrimination – retaliation may be present. *Shannon v. Bellsouth Communications*, 292 F. 3d 712, 715 (11<sup>th</sup> Cir. 2002).

Notably, in the County's agenda item submitted on May 5, 2011 (to recommend settlement of Ms. Post's claims to the County Council), the County attorney, Nancye Jones and Tom Motes, HR Manager, specifically wrote that:

"Former Deputy Sheriff Heather Post was the subject of an internal investigation for insubordination when she filed an EEOC Complaint alleging that she had been subjected to a hostile work environment and gender discrimination."

Clearly, the County was concerned about the risks of liability surrounding the suspicious and retaliatory acts that resulted in my client's firing after she reported discrimination and the basis for the internal investigations against her.

**C. An Objective and Neutral Hearing Officer Found Ms. Post More Credible than the Individuals that Fired Her.**

As you may be aware, over the last year, managerial agents of the County continue to have, on several occasions, defamed Ms. Post, in the public, and questioned her "veracity." Notably, it should be noted that when an independent hearing officer reviewed and heard testimony from County employees and my client – the hearing officer found my client to "be more credible" that the persons testifying on the County's behalf. Further, the hearing officer found "no evidence was provided to show that [Ms. Post] violated an established policy." (See Exhibit A: UC Hearing Appeal Decision). Clearly, had this matter proceeded into litigation, my client's claims would have likely been successful before a jury.

**D. Breach of Settlement Agreement.**

Originally, my client hired an attorney and intended to pursue litigation in federal court relating to her separation and mistreatment. As you may know, our clients entered into a binding and executed settlement agreement on or about March 30, 2011. (*See Exhibit B: Attached Settlement Agreement*). As a primary and binding term of that agreement, your client agreed to "rescind" my client's termination and further agreed to accept her resignation. Further, your client agreed not to make any comments relating to the reasons my client left her employment and a neutral employment reference. My client agreed to execute the release and accept your client's offer of settlement on the basis that her record would be properly characterized and that your client would not continue to make defamatory statements about her. Unfortunately, it has come to our attention that your client has breached the agreement and she has now been damaged in the public and cast in a negative light. As you know, a public official can bring claims for defamation.

First, on or about June of 2018, then County Manager Jim Dineen openly, publicly and willfully disparaged my client relating to her firing during a public meeting. We believe this was a blatant and willful attempt to defame my client in the public. He then maliciously stated and was quoted in the *Daytona Beach News-Journal* as saying "I think you all forget her circumstances of why she does not work here anymore." (*See June 2, 2018 Daytona Beach News-Journal Article: Volusia County Seeks to Turn Page on Recent Controversies*).

Further, we recently conducted a public records request with respect to her file, and it appears that your client *never* changed my client's termination to a resignation as promised and agreed.

In fact, paperwork continues to be submitted by Volusia County Human Resources *to the public* stating that my client was fired for “untruthfulness.”

For example, on October 28, 2018, the *Daytona Beach News-Journal* wrote in an article that Ms. Post in 2010 was fired “based upon records” for lying under oath and for insubordination. Additionally, the County has even provided Exhibit evidence in non-related court cases as recently as 2018 saying the same.

As you know, courts around the country routinely enter judgement against Defendants that breach settlement agreements and defame the other party in violation of terms like the parties entered into here. *See Moreno v. Tringali*, CV 14-4002 (JBS/KMW), 2017 WL 2779746, at \*1 (D.N.J. June 27, 2017); *Eichelkraut v. Camp*, 513 S.E.2d 267 (Ga. App. 1999); *Fisher v. Biozone Pharm., Inc.*, 12-CV-03716-LB, 2017 WL 1097198, at \*8 (N.D. Cal. Mar. 23, 2017). It appears that once the agreement was executed, no efforts were made by your client to uphold the agreement with respect to my client’s record – which was exemplary prior to her illegal firing.

**E. Demand.**

The purpose of this letter is to invite a dialogue regarding resolution of Ms. Post’s claims.

First, we request that the County issue a public apology to Ms. Post relating to its failure to uphold the settlement agreement and allow its agents to publicly defame her and malign her good name relating to her firing. Second, we request that the County immediately uphold the agreement and align her records to show that the County reversed its firing of her and accepted her resignation. As you know, Courts have routinely held that discriminatory and retaliatory personnel records can be ordered to be removed from personnel files of employees. If the County will not agree to abide by its contracted promises, in addition to other relief, we will request that a Court remove the discriminatory and retaliatory records from her file.

Finally, we request that the County promise to abide by the agreement it entered into and promise not to engage in any further malicious comments about her. We look forward to hearing from your client and an amicable response within 15 days of this letter.

Sincerely,



Kelly Chanfrau

KHC/mds  
Enclosures

OK



AGENCY FOR WORKFORCE INNOVATION  
Unemployment Compensation Appeals  
MSC 344 CALDWELL BUILDING  
107 EAST MADISON STREET  
TALLAHASSEE FL 32399-4143

**IMPORTANT:** For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.  
**IMPORTANTE:** Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.  
**ENPÒTAN:** Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pran àmpil tòn, paské tòn limité pou ou ranpli apèl la.

SSN: [REDACTED]  
Docket No. 2010-146645U

Employer Account No.: 9975114  
Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

**CLAIMANT/Appellant**

HEATHER POST

**EMPLOYER/Appellee**

VOLUSIA COUNTY  
PAYROLL ADMINISTRATOR  
123 W INDIANA AVE  
DELAND FL 32720-4615

THOMAS J PILACEK  
THOMAS J PILACEK & ASSOCIATES  
5844 RED BUG LAKE ROAD  
WINTER SPRINGS FL 32708

AGENCY FOR WORKFORCE INNOVATION  
CENTRAL OFFICE BENEFITS

APPEARANCES: CLAIMANT &amp; EMPLOYER

LOCAL OFFICE #: 3628-0

**DECISION OF APPEALS REFEREE****Important appeal rights are explained at the end of this decision.****Derechos de apelación importantes son explicados al final de esta decisión.****Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.****Issues Involved:**

**SEPARATION:** Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(29), Florida Statutes; Rule 60BB-3.020, Florida Administrative Code.

**OVERPAYMENT:** Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Agency, pursuant to Section 443.151(6); 443.071(7); 443.1115; 443.1117, Florida Statutes and 20 CFR 615.8.

**Finding of Facts:** The claimant was employed as a deputy sheriff II for Volusia County from July of 2008 through September 28, 2010. The claimant worked on a full-time schedule at a rate of \$15.39 an hour. In June of 2010, the claimant was asked via telephone to bring in her return to full duty note signed by her physician, to her captain. On June 17, 2010, the claimant turned in her original return to full-duty note to county personnel office who informed her to also forward the documentation to County risk management department. On June 17, 2010, the claimant notified her captain regarding. The claimant reported to her Captain on June 18, 2010, for a scheduled meeting. Upon reporting, the claimant was asked if she had her return to work note. The claimant cited she had forgotten it, and had left it in her vehicle. The claimant asked

**EXHIBIT**

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whether she could get the documentation from her vehicle. The claimant was told she did not need to get it; she had already turned it in to risk management. On June 22, 2010, the claimant was scheduled for deputy refresher training, and previously directed to call her captain upon completing her refresher training for further instruction. The claimant completed her training and informed the training supervisor she needed to contact her captain. The claimant was told by the supervisor of the training center not to worry about it. The claimant was accused of failure to follow direction and or order by failing to turn in the original return to work order rather than offering a copy to her captain. The claimant was also accused of failing to follow direction, by not contacting her captain upon conclusion of training, in accordance with a directive. On September 28, 2010, the claimant was discharged for failure to follow direction and orders.

The claimant subsequently received unemployment benefits in the amount of \$275.00.

**Conclusions of Law:** The law provides that a claimant who was discharged for misconduct connected with the work shall be disqualified from receiving benefits. "Misconduct connected with work" means conduct evincing such willful or wanton disregard of an employing unit's interests as is found in deliberate violation or disregard of standards of behavior which the employing unit has a right to expect of its worker; or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employing unit's interests or of the worker's duties and obligations to the employing unit.

The record reflects that the employer was the moving party in the separation. Therefore, the claimant is considered to have been discharged. The burden of proving misconduct is on the employer. Lewis v. Unemployment Appeals Commission, 498 So.2d 608 (Fla. 5th DCA 1986). The proof must be by a preponderance of competent substantial evidence. De Groot v. Sheffield, 95 So.2d 912 (Fla. 1957); Tallahassee Housing Authority v. Unemployment Appeals Commission, 468 So.2d 413 (Fla. 1986). It was shown that the claimant was discharged for failure to follow direction and orders. The claimant actions as described were not an intentional disregard of the employer's interest. Careless and negligent acts which may justify termination but are neither, willful, wanton nor deliberate are not misconduct under the statute. Williams v. Unemployment Appeals Commission, 484 So.2d 89 (Fla. 5th DCA 1986). Consideration has been given to the employer's testimony the claimant was not advised by the training supervisor, "not to worry about it" as it relates to her request to notify her captain of her completion of training. The claimant offered conflicting testimony and the employer failed to provide competent substantial evidence to the contrary. The employer presented hearsay evidence to support these allegations. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. Section 120.57, Florida Statutes; Rule 60BB-5.024(3)(d), Florida Administrative Code. In addition, when asked who has authority at the on-site training center; the immediate supervisor or the training supervisor? The employer's witness cited, "it's a vague area". The claimant was freed from a directive by the acting supervisor. Therefore no evidence has been provided to show the claimant violated an established policy. While the employer may have made a valid business decision in discharging the claimant, it has not been shown that the claimant's actions constitute misconduct connected with work. Accordingly, the claimant should not be disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding whether the claimant cited HIPPA rights when responding to her captain and whether she was released from a directive by her training supervisor and is charged with resolving these conflicts. The Unemployment Appeals Commission has set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the claimant to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the claimant.

The law provides that a claimant who received benefits to which he or she was not entitled will be required to repay the overpaid benefits to the Agency. The law does not permit waiver of recovery of overpayments.

The record shows that the claimant received \$275.00 in unemployment benefits subsequent to her job separation from the instant employer. Since the appeals referee has reversed the determination of the adjudicator in this decision, there is no overpayment.

**Decision:** The determination dated October 27, 2010, is REVERSED. The claimant is qualified for receipt of benefits and has not been overpaid in connection with this claim. The claimant has obtained legal representation at no charge, which is APPROVED.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Agency and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

This is to certify that a copy of the above decision was mailed to the last known address of each interested party on December 10, 2010.

ABDULLAH MUHAMMAD  
Appeals Referee

By:

  
DOROTHY SHEFFIELD, Deputy Clerk

**IMPORTANT - APPEAL RIGHTS:** This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the mailing date shown. If the 20<sup>th</sup> day is a Saturday, Sunday or holiday defined in F.A.C. 60BB-6.004, filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Agency and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at [www.fluidnow.com/appeals](http://www.fluidnow.com/appeals) or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Unemployment Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); <https://www.uac.fl.gov/Appeal.aspx>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

**IMPORTANTE - DERECHOS DE APELACIÓN:** Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la fecha marcada en





U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Miami District Office

One Biscayne Tower  
2 South Biscayne Blvd., Suite 2700  
Miami, FL 33131  
(305) 582-1760  
TTY (305) 582-1762  
FAX (305) 582-1833

MEDIATION SETTLEMENT AGREEMENT

CHARGE NUMBER: 510-2010-05506

CHARGING PARTY: Heather Post

RESPONDENT: Volusia County Sheriff's Office

1. In exchange for the promises made by Volusia County Sheriff's Office, pursuant to Charge Number 510-2010-05506, Heather Post agrees not to institute a law suit under Title VII of the Civil Rights Act of 1964, as amended, based on EEOC Charge Number 510-2010-05506.
2. Further we agree that submission of this agreement to EEOC will constitute a request for closure of EEOC Charge Number 510-2010-05506.
3. It is understood that this agreement does not constitute an admission by Respondent of any violation of Title VII of the Civil Rights Act of 1964, as amended.
4. Respondent agrees that there shall be no discrimination or retaliation of any kind against any person because of opposition to any practice deemed illegal under Title VII of the Civil Rights Act of 1964, as amended, the ADEA or the ADA as a result of filing this charge, or for giving testimony, assistance or participating in any manner in an investigation, proceeding or a hearing under the aforementioned Acts.
5. This document constitutes a final and complete statement of this EEOC agreement between the parties. The parties acknowledge that the Charging Party and Respondent will enter into a supplemental agreement. The parties also acknowledge that EEOC will not enforce any provisions(s) of the supplemental agreement.
6. The parties agree that the EEOC is authorized to investigate compliance with this agreement and that this agreement may be specifically enforced in court by the EEOC or the parties and may be used as evidence in a subsequent proceeding in which a breach of this agreement is alleged.
7. As evidence of a good faith effort to resolve EEOC Charge Number 510-2010-05506, Respondent offers and Charging Party accept the following proposal of settlement:
  - A. Respondent agrees to pay the Charging Party \$44,000.00, no deductions, in full and final resolution of EEOC Charge Number 510-2010-05506. Respondent further agrees to disburse the \$44,000.00, stipulated settlement amount in the following manner: (1) A check made payable to the Charging Party without deductions for emotional anguish, pain and suffering and, (2). A check made payable to Charging Party's attorney, Jill S. Schwartz and Associates, P.A., 180 North Park Avenue, Suite 200, Winter Park, Florida 32789, Telephone: (407) 647-8911. The parties agree they will determine at a later date the amount of each check to be disbursed.
  - B. Respondent agrees to provide the Charging Party's attorney, Gary D. Wilson, Esquire, Jill S. Schwartz and Associates, P.A., 180 North Park Avenue, Suite 200, Winter Park, Florida 32789, Telephone: (407) 647-8911 at the following email address by no later than April 12, 2011 the supplemental agreement referenced in paragraph five (5) of this EEOC Agreement: gswil@jsschwartz.com.
  - C. Charging Party agrees to return the signed and executed supplemental agreement by no later than April 21, 2011 to Respondent's attorney, Nancy Jones, Assistant County Attorney, Volusia County Government, 123 West Indiana Avenue, Deland, Florida 32720, Telephone: (386) 736-5950, email: nancy.jones@volusia.fl.us.
  - D. Respondent and Charging Party agree this EEOC Mediation Settlement Agreement and payment of the \$44,000.00 stipulated settlement is contingent upon approval by the Volusia County Council's at its April 21, 2011 meeting. If the Agreement is approved, Respondent agrees the two(2) settlement checks referenced in paragraph 7(A) above will be mailed to Charging Party's attorney's address for receipt by no later than April 29, 2011, provided Respondent receives the signed and executed supplemental agreement by no later than April 21, 2011.
  - E. Respondent agrees it will provide the Charging Party a neutral employment reference to any and all employment verification requests. Specifically, Respondent agrees to only provide Charging Party's dates of employment and last position held to any and all employment verification inquiries. Respondent further agrees in response to employment verification inquiries not to make any comments regarding the reason(s) for Charging Party's leaving Respondent's employment and/ or Charging Party's eligibility for rehire.
  - F. Respondent agrees not to contest or oppose any claim by the Charging Party for unemployment compensation benefits. Respondent and Charging Party understand that the final decision regarding awarding of unemployment compensation benefits is the sole discretion of the State of Florida Compensation Office.

EXHIBIT

"B"



## MEDIATION SETTLEMENT AGREEMENT

**Charge Number: 510-2010-05596**  
**page 2**

G. Respondent agrees to issue a letter dated September 29, 2010 and signed by Volusia County Sheriff Ben Johnson rescinding Charging Party's September 28, 2010 termination letter. The parties agree the letter will be placed in Charging Party's personnel file by no later than April 22, 2011, provided the Volusia County Council approves the EEOC Mediation Settlement Agreement. The parties agree the letter will contain only the following statement:

**"I am rescinding Heather Post's September 28, 2011 letter of termination for purposes of accepting her resignation letter."**

**H. Charging Party agrees to provide Respondent by no later than April 21, 2011 a letter of resignation dated September 29, 2010. The parties agree if the Volusia County Council rejects the EEOC Mediation Settlement Agreement Charging Party's resignation letter will be voided.**

**1. Charging Party and Respondent agree that if the Volusia County Council approves this EEOC Mediation Settlement Agreement Charging Party waives her termination appeal right to the Personnel Board.**

**J. Respondent and Charging Party agree that if the Charging Party does not return the signed and executed supplemental agreement Respondent will be under no obligation to make payment of the \$344,000.00, stipulated settlement amount and/or honor the other terms outlined in paragraphs 7(A), 7(D), 7(B), 7(F), 7(G), 7(H) and 7(I) of this EEOC Mediation Settlement Agreement.**

**Volusia County Sheriff's Office**  
**Respondent**

*Bill Lee*  
Respondent Representative  
Chief Bill Lee

3/30/11  
Date

*Nancy Jones*  
Respondent Representative  
Nancy Jones, Assistant County Attorney

3/30/11  
Date

Charging Party  
Heather Post

03-30-2017  
Date

**Charging Party Representative**  
**Gary D. Wilson, Esquire**

3/30/11  
Date

In reliance on the promises made in paragraph 7(A) through 7(J) above, EEOC agrees to terminate its investigation and to not use the above referenced charge as a jurisdictional basis for a civil action under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1967 as amended, or the Americans with Disabilities Act of 1990, as amended. EEOC does not waive or in any manner limit its right to investigate or seek relief in any other charge including, but not limited to, a charge filed by a member of the Commission against the Respondent.

**On Behalf of the Commission:**

**Delmer Franklin-Thomas**  
**Acting District Director**  
**Miami District Office**

Date \_\_\_\_\_